

**REMARKS**

The remarks below respond to the Office Action mailed May 20, 2004.

Claims 1 through 21 are pending in the application.

With this response claims 18 and 19 have been amended. Claims 22 through 35 are added. Claims 1 through 35 remain in the application for consideration.

Enclosed is a check for \$1,408.00, which includes a three-month extension fee of \$980.00 plus a fee of \$428.00 for the added claims 22 through 35. Please charge any additional fees to Deposit Account No. 50-1775.

Support for each of added claims 22 through 35 can be found in the specification as originally filed, including the specification at page 83, and in the original claims as follows.

Added claim 22 includes subject matter of original claim 7.

Added claim 23 includes subject matter of original claim 8.

Added claim 24 includes subject matter of original claim 11.

Added claim 25 includes subject matter of original claim 12.

Added claim 26 includes subject matter of original claim 10.

Added claim 27 includes subject matter of original claim 1.

Added claim 28 includes subject matter of original claim 7.

Added claim 29 includes subject matter of original claim 10.

Added claim 30 includes subject matter of original claim 8.

Added claim 31 includes subject matter of original claim 11.

Added claim 32 includes subject matter of original claim 12.

Added claim 33 includes subject matter of original claim 9.

Added claims 34 and 35 are supported at page 83 of the original specification.

Reconsideration and allowance of the claims, as amended, and in light of the following remarks, are respectfully requested.

### **Rejection Under 35 U.S.C. 103**

Claims 1 through 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baugh et al. (6,444,228) in view of WO 9800161, JP 11246420, Sims et al., and Shah et al.

The rejection of claims 1 through 17 is traversed.

Applicants note that while claims 1 through 21 are pending and indicated to be rejected at paragraph 6 of the Office Action Summary, only claims 1 through 17 are specifically mentioned in the explanation of the rejection (at pages two and three of the Office action). The rejection states no specific grounds and contains no discussion whatsoever as to why claims 18 through 21 stand rejected.

### **The Baugh et al. Reference**

The rejection cites the Baugh et al. reference, US Patent No. 6,444,228, as partial basis for the rejection of claims 1-17 under 35 U.S.C. § 103. The Baugh et al. reference issued September 3, 2002. The present patent application has a filing date of April 2001, which is before the issue date of the Baugh et al. reference, making the Baugh et al. reference prior art only under 35 U.S.C. section 102(e).

The cited Baugh et al. reference (U.S. Pat. No. 6,444,228) and the invention of the present application were both assigned to Medtronic Inc., or were subject to an obligation of assignment to Medtronic Inc., at the time of the present invention. With common ownership of the cited U.S. patent reference (6,444,228) and the invention of the present application, the cited U.S. patent reference, qualifying as prior art under section 102(e), is not available as prior art under section 103(c) in a determination of obviousness the pending claims. See, e.g., MPEP 2141.01. Thus, the rejection of claims 1 through 17 under section 103 based on US patent document, no. 6,444,228, should be withdrawn.

### **Claim Features Not Addressed by the Office Action**

Many specific features of claims 1 through 17 were not addressed by the outstanding rejection. Thus, the rejection of any claims that recite those features should be reconsidered or withdrawn.

In specific, each of original claims 7, 8, 9, 10, and 11 recite specific shapes associated with molds, e.g., conical shapes, "rod-like" shapes, rectangular shapes. Original claim 12 recites an autologous platelet gel comprising bone fragments or bone augmenting materials. The Office action fails to mention these specific features of claims 7 through 12. The rejection of this claimed subject matter is, therefore, unsupported, and Applicants respectfully request that the rejection of these claims be reconsidered or withdrawn.

New claims 22 through 35 each recite autologous plate gels that have specific shapes, including as those recited in claims 7 through 11, or that include bone components or bone augmenting materials. New claims 22 through 35 are believed to be in condition for allowance.

*Claims Not Specifically Addressed by Rejection*

As mentioned above, the rejection only specifically discusses claims 1 through 17, while failing to mention claims 18 through 21, which are also pending.

The Examiner is invited to contact the undersigned, at the Examiner's convenience, should the Examiner have any questions regarding this communication or the present patent application.

Respectfully Submitted,

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